(19,257.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 200.

R. R. DUNBAR, ELIZABETH DUNBAR, GEORGE WASHINGTON, ET AL., PLAINTIFFS IN ERROR,

vs.

LUCRETIA L. GREEN, WILLIAM E. GREEN, EFFIE GREEN, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

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a-10 And thereafter and on, to-wit: September 22, 1900, said plaintiffs filed their amended petition in said court and cause, and said amended petition is in the words and figures following, to-wit:

In the District Court in and for the County of Wyandotte and State of Kansas.

SANFORD M. GREEN, LUCRETIA L. GREEN, WILLIAM E. GREEN, and Effie Green, Plaintiffs,
vs.
R. R. DUNBAR, ELIZABETH DUNBAR, GEORGE WASHINGTON, Allen F. Reed, Al. Payne, T. J. Payne, John Small, and George Dunbar, Defendants.

Amended Petition.

Comes now the said plaintiffs and for their amended petition herein allege: That the plaintiffs are the owners in fee simple of the following described real estate lying, being and situate in the county of Wyandotte, State of Kansas, to-wit:

Lots eighteen (18), forty two (42), forty three (43), forty four (44), forty five (45), and forty seven (47) in block ten (10); lots eight (8), ten (10), eleven (11), twelve (12), thirteen (13), twenty seven (27), twenty eight (28), twenty nine (29) and thirty (30), in block eight (8); lots eighteen (18), nineteen (19), twenty (20), twenty three (23), twenty-four (24), twenty five (25), twenty six (26), thirty five (35) and thirty six (36) in block eleven (11); lot nine (9) in block twelve (12); lots thirty three (33) and thirty four (34), in block thirteen (13); lots nineteen (19) and twenty (20), in block sixteen (16); lots twenty (20) and twenty one (21) in block nineteen (19); lot one in block seven (7), all in Argentine Heights, and addition to the city of Argentine as shown by the recorded plat thereof on file in the office of the register of deeds of the said county of Wyandotte, State of Kansas. That said plaintiffs are entitled to the possession thereof, and that the said defendants unlawfully keep the said plaintiffs out of the possession thereof.

The plaintiffs aver on information and belief that the said defendants are wholly insolvent and irresponsible and the dam-
11 ages suffered by these plaintiffs cannot be recovered from the said defendants in any way whatever, which said damages the plaintiffs aver amount to the sum of five hundred dollars.

Wherefore, these plaintiffs pray judgment for the possession of their said lands and lots, that the said defendants and each of them be evicted therefrom, and that the said plaintiffs have proper writs of assistance to carry out such judgment. That pending the trial

of this action the said defendants and each of them be restrained, enjoined and prohibited from doing or continuing to do the acts herein complained of and now threatened to be done by the said defendants pending the trial of this action and that upon the final hearing these temporary orders be made perpetual, that — have and recover judgment for the sum of one thousand dollars, their damages so as aforesaid sustained, and the costs of this action, and that after a full hearing of this action upon its merits that the plaintiffs may have such other, further and different relief as in justice they may be entitled.

F. M. WOODS,
McHALE & LEARNARD,
Plaintiffs' Att'ys.

STATE OF KANSAS, }
Wyandotte County, } *ss:*

Sanford M. Green, of lawful age, being first duly sworn, says that he is one of the plaintiffs above named, that he has read and heard read the above and foregoing petition and knows the contents thereof, that the same is true, that such matters as are therein stated upon information and belief he believes to be true.

SANDFORD M. GREEN.

Subscribed and sworn to before me this 13 day of September, 1900.

CHARLES DAUZENROTH, *J. P.*

Endorsed on the back: "14636. S. M. Green *et al.*, plaintiffs, *vs.* R. R. Dunbar *et al*, defendants. Petition (amended). Filed Sept. 22, 1900. A. Gunning, clerk, by Wm. Needles, deputy. F. M. Woods, McHale & Learnard, attorneys for plaintiffs."

12 And thereafter and on, to-wit: November 19, 1900, said cause was submitted to the court on an agreed statement of facts, and the journal entry thereof is found in Journal 24 at page 226, and is in the words and figures following, to-wit:

MONDAY, *November* 19, 1900.

SANDFORD M. GREEN ET AL., Plaintiffs,
vs.
R. R. DUNBAR ET AL., Defendants. } No. 14636.

And now on this day this cause comes regularly on for trial, plaintiffs appear by F. M. Woods and I. F. Madlem, their attorneys, and defendants appear by L. F. Bird and H. G. Pope, their attorneys. And thereupon on motion of said defendants leave is given to said defendants to file answer herein within one day. And thereupon

on motion of said defendants it is ordered that plaintiffs file good and sufficient bond for costs herein to be approved by the clerk within 5 days from this date. And now come the parties hereto and submit to the court their agreed statement of facts herein, and the court thereupon takes said statement of facts under advisement, and it is ordered that counsel file briefs of arguments and authorities herein within 20 days. judgment reserved.

And said agreed statement of facts is as follows, to-wit:

13 In the District Court of Wyandotte County, Kansas.

SANFORD M. GREEN, LUCRETIA L. GREEN, WILLIAM E. Green, and Effie Green, Plaintiffs,
vs.
R. R. DUNBAR, ELIZABETH DUNBAR, GEORGE WASHington, Allen F. Reed, Al. Payne, T. H. Payne, John Small, and George Dunbar, Defendants. } No. 14636.

Agreed Statement of Facts.

The land in controversy herein, to-wit: lots situated and described in plaintiff's petition and located in Wyandotte county, State of Kansas, and in the northwest quarter of section 29, township 11, range 25 east, was patented to Susan Whitefeather, as the head of a family consisting of herself and George Washington her son, and members of the Shawnee tribe of Indians, on December 28th, 1859, by the United States. That the following is a true copy of said patent:

" Book 2, page 296.

The United States of America
to
Susan Whitefeather.

Patent No. 317, dated Dec. 28, 1859; recorded Jan. 25, 1878.

Whereas, under the provisions of the 2nd and 9th articles of the treaty concluded on the 10th day of May, 1854, between the commissioners on the part of the United States and the delegates of the United Tribe of Shawnee Indians, certain members of said tribe became entitled out of the lands ceded by said treaty, if a single person to 200 acres and if the head of a family a quantity equal to 200 acres for each member of his or her family and to a patent therefor upon provision being made by Congress for the issuing of the same which has been done by the 11th section of the act of Congress, approved Nov. 3, 1859 (U. S. Statutes vol. II page 430). And whereas, it appears from Reservation Book C, accompanying a return

dated November 6, 1857, from the office of Indian Affairs to the General Land Office, that these have been located and approved as the selection of Susan Whitefeather, the head of a family consisting of herself and George Washington, the following described tracts of land, to-wit: the northeast quarter of the northeast quarter, and the west half of the northeast quarter, and the east half of the northwest quarter, all in section 30, township 11, range 25; the northwest quarter of section 29, township 11, range 25; the northwest quarter of section 29, township 11, range 25; and the southeast quarter of the northeast quarter of section 30, township 11, range 25—400 acres.

Now know ye, that the United States of America, in consideration of the premises and in accordance with the directions of the Secretary of the Interior, under the aforesaid 11th section of the act of Congress of Nov. 3, 1859, have given and granted, and by these presents do give and grant unto the said Susan Whitefeather, and to her heirs, the tracts of land above described, with the stipulation prescribed by the Secretary of the Interior under the act of Congress aforesaid, of March 3, 1859, that the said tracts shall never be sold or conveyed by the grantee or her heirs, without the consent of the Secretary of the Interior for the time being.

To have and to hold the said tracts of land with the appurtenances unto the said Susan Whitefeather and to her heirs
14 and assigns forever, with the stipulation aforesaid.

In testimony whereof, I, James Buchanan, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington this 28th day of December, 1859, and of the Independence of the United States the 84th.

By the President,

[SEAL.] JAMES BUCHANAN,
By J. A. B. LEONARD, *Secretary.*

JAS. L. WILSON,
Acting Recorder of General Land Office ad Interim.

GENERAL LAND OFFICE,
WASHINGTON, D. C., *January* 21, 1878.

I do hereby certify that the annexed copy of a patent, dated Dec. 28, 1859, in favor of Susan Whitefeather, is a true and literal exemplification from the records of this office.

(Test name and seal of office.)

J. A. WILLIAMSON,
Commissioner of General Land Office."

It is further agreed that the tribal relations of said Shawnee Indians as a tribe existed and was so recognized by the political department of the United States Government on December 30, 1870, and all times prior to said date, and is still so recognized.

It is further agreed that the following patent to land located in Johnson county, State of Kansas, from the United States to George Washington, as the head of a family consisting of himself, Judy Washington, David Washington and Rebecca Washington, by patent (Shawnee) number 333, is a true and correct copy of said patent as recorded in vol. Z, page 540, in the register of deeds' office in Johnson county, Kansas, to-wit:

"Book Z, page 540.

The United States of America
to
George Washington.

Patent No. 333, dated Dec. 28, 1859; recorded April 29, 1873.

Whereas, under the provisions of the 2nd and 9th articles of the treaty concluded on the 10th day of May, 1854, between the commissioners on the part of the United States and the delegates of the United Tribe of Shawnee Indians, certain members of said tribe became entitled out of the lands ceded by said treaty, if a single person, to 200 acres and if the head of a family a quantity equal to 200 acres for each member of his or — family and to a patent therefor upon provision being made by Congress for the issuing of the same which has been done by the 11th section of the act of Congress, approved Nov. 3, 1859 (U. S. Statutes, vol. 11, page 430). and whereas, it appears from Reservation Book C, accompanying a return dated November 6, 1857, from the Office of Indian Affairs to the General Land Office, that there have been located and approved as the selection for George Washington, the head of a family consisting of himself, Judy Washington, David Washington, and Rebecca Washington, the following described tracts of land, to-wit: The east one-half of the northeast quarter of section 17 (80 acres); the south one-half of the northwest quarter of section 16 (80 acres); and the northeast quarter of the southwest quarter of section 16 (40 acres); in township 15, south of range 23 east; the west one-half of the southeast quarter of section 16 (80 acres); the east one-half of the northeast quarter of section 16 (80 acres); and the southwest quarter of the northeast quarter of section 16 (40 acres); in township 15, south of range 23 east; the north one-half of the
15 northwest quarter of section 16 (80 acres); the east one-half of the southwest quarter of section 9 (80 acres); and the northwest quarter of southwest quarter of section 9 (40 acres); in township 15, south of range 23 east; the northeast quarter of section 9 (160 acres); and the northwest quarter of the southeast quarter of section 9 (40 acres) in township 15, south of range 23, east of the sixth principal meridian, in Kansas, containing in the aggregate eight hundred acres.

Now know ye, that the United States of America, in consideration of the premises and in accordance with the directions of the Secretary of the Interior, under the aforesaid 11th section of the act of Congress of Nov. 3, 1859, have given and granted, and by these presents do give and grant unto the said George Washington, as the head of the family as aforesaid, and to his heirs the tract of land above described, but with the stipulation prescribed by the Secretary of the Interior under the act of Congress aforesaid, of March 3, 1859, that the said tracts shall never be sold or conveyed by the grantee or his heirs, without the consent of the Secretary of the Interior for the time being.

To have and to hold the said tracts of land with the appurtenances unto the said George Washington as the head of the family as aforesaid, and to his heirs and assigns forever, with the stipulation aforesaid.

In testimony whereof, I, James Buchanan, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed. Given under my hand at the city of Washington this 28th day of December, 1859, and of the Independence of the United States the 84th.

By the President:

JAMES BUCHANAN,
By J. A. B. LEONARD, *Secretary.*

JAS. L. WILSON,
Acting Recorder of General Land Office ad Interim.

Recorded vol. of Shawnee Reserves page 333."

It is further agreed that the following is a true and correct copy of the probate records of Johnson county, State of Kansas, in the appointment of Jonathan Gore as the guardian of George Washington, minor heir of George and Judy Washington of Johnson county, Kansas, to-wit:

"*Petition and Oath of Appointment.*

STATE OF KANSAS, }
County of Johnson, }

In Probate Court of Johnson county, Kansas.

Petition.

To the Hon. B. P. Noteman, probate judge, your petitioner, George Washington, would most respectfully represent that he is a minor over the age of fourteen years, and that his parents are both deceased.

2nd. That he has real estate in said county of which he is the heir thereto.

3rd. That your petitioner therefore prays this hon. court to appoint Jonathan Gore of Johnson county, Kansas, guardian of his person and property and for such other and further relief as may seem just and reasonable.

his
GEORGE x WASHINGTON.
mark.

STATE OF KANSAS, }
County of Johnson, } ss:

George Washington on his oath says that the statements and facts set forth in the above and foregoing petition are true in substance and in fact.

his
GEORGE x WASHINGTON.
mark.

Subscribed in my presence and sworn to this 27th day of Nov. A. D. 1867.

B. P. NOTEMAN,
Probate Judge.

STATE OF KANSAS, }
County of Johnson, } ss:

16 Jonathan Gore, of lawful age, being first duly sworn deposeth and saith that he will faithfully and impartially discharge the duties of guardian of the person and property of George Washington, a minor heir of George Washington and Judy Washington, deceased, and over the age of fourteen years according to law.

JONATHAN GORE.

Subscribed in my presence and sworn to before me this 27th day of Nov. A. D. 1867.

B. P. NOTEMAN,
Probate Judge.

Filed Nov. 27th, 1867.
B. P. NOTEMAN,
Probate Judge.

Letters of Guardianship.

STATE OF KANSAS, }
County of Johnson, } ss:

The State of Kansas to all persons to whom these presents shall come, Greeting:

Know ye, that whereas George Washington, minor, — possessed of property in this State which may be lost, destroyed or diminished

in value, if speedy care be not taken of the same. To the end, therefore, that said property may be collected, preserved and disposed of according to law, we do hereby appoint Jonathan Gore, guardian of all and singular, the goods and chattels, rights and credits which are of the said minor, with full power and authority to secure and dispose of said property according to law and collect all moneys due said minor, and in general to do and perform all other acts and things which are now or hereafter may be required by law.

In testimony whereof, I, B. P. Noteman, judge of the probate court in and for the county of Johnson aforesaid have hereunto signed my name and affixed the seal of said court at office this 27th day of November, A. D. 1867.

[SEAL.] B. P. NOTEMAN,
Probate Judge."

It is agreed that the above and foregoing is a true and correct copy of the only proceedings in the probate court of Johnson county, Kansas, in the appointment of Jonathan Gore as the guardian of any George Washington, a minor and Shawnee Indian, and member of the Shawnee tribe of Indians in the State of Kansas.

It is further understood and agreed that the only land or lands in which George Washington, minor heir of Susan Whitefeather was interested in, was or were all located in Wyandotte county, State of Kansas.

It is further agreed and understood that the following is a true and correct copy of the probate records of Johnson county, Kansas, and recorded in volume 2, page 390 of said probate court, in reference to the sale of the northwest quarter of section 29, township 11, south of range 25, being and situated in Wyandotte county, Kansas, by Jonathan Gore, guardian, to-wit:

Probate Court, Johnson County, State of Kansas, January Term, 1869.

MARCH 2ND, 1869.

Court met pursuant to adjournment.
Present: Same court.

In re the Estate of GEORGE WASHINGTON, a Minor, Heir of Susan Whitefeather, Deceased; Jonathan Gore, Guardian.

17 *Petition to Sell Real Estate.*

Now comes Jonathan Gore, guardian of George Washington, a minor heir of Susan Whitefeather, deceased, and presents his petition praying for an order of sale of the following real estate, to-wit:

The northwest quarter of section twenty-nine (29)—160 acres; also the southeast quarter of the northwest quarter of section thirty (40 acres), all in township 11 (eleven) south of range twenty-five

(25), east of the sixth principal meridian in Kansas, containing two hundred acres as the property of said minor on examination whereof the court doth find from the facts set forth in said petition and other evidence adduced that said minor is not possessed of any personal property that can be appropriated to his proper use and benefit, and that said land is unproductive and from which said minor receives no income; that said land is timber land, and subject to waste by reason of trespass, and that it is necessary that said land should be sold for the benefit of said minor and that said land can be sold better at private sale than at public. And it further appearing that said guardian hath given legal notice to said minor of this application for the sale of said lands and that said guardian hath given additional security to the satisfaction of this court.

It is therefore ordered that the said guardian do sell all the right, title and interest of said minor in and to said real estate for cash at probate sale and that he make return of his proceedings to this court.

B. P. NOTEMAN,
Probate Judge.

STATE OF KANSAS, }
County of Johnson, } ss:

In Probate Court of Johnson County, Kansas.

Petition.

To B. P. Noteman, probate judge of Johnson county, Kansas:

Your petitioner, Jonathan Gore, would most respectfully represent and show to this honorable court:

1st. That he is guardian of George Washington, minor heir of Susan Whitefeather, deceased.

2nd. Your petitioner is a resident of the county of Johnson, Kansas. That said ward is temporarily absent from said county; that said ward as heir of said deceased is possessed of the land as described in accompanying notice.

3rd. Your petitioner further represents that said ward is not possessed of any personal property that can be appropriated to his proper use and benefit.

4th. That said ward has land that to him is unproductive and from which he receives no income. The land is timber land and subject to waste by reason of trespass, and that it is necessary that the land should be sold for the benefit of said ward. Wherefore your petitioner prays this honorable court that an order may issue to your petitioner to sell the land above described at private sale, that the same can be better sold at private sale than at public.

JONATHAN GORE, *Guardian.*

STATE OF KANSAS, } ss:
County of Johnson, }

Jonathan Gore of lawful age, *who* first having been duly sworn according to law says he is the within petitioner and the facts set forth are true in substance and in fact.

JONATHAN GORE, *Guardian.*

Sworn and subscribed to before me this 2nd day of March, A. D. 1869.

B. P. NOTEMAN,
Probate Judge.

Notice.

To George Washington, minor heir:

You are hereby notified that on the 2nd day of March, A. D. 1869, or as soon thereafter as the same can be heard, I shall apply to the probate court of Johnson county, Kansas, to be held in Olathe in said county and State, by petition, a copy of which is hereby attached for an order to sell the following land, to-wit: The northwest quarter of section twenty-nine (160 acres); also the southeast quarter of the northwest quarter of section thirty (30) forty acres, all in township eleven, south of range twenty-five, east of the sixth principal meridian in Wyandotte county, Kansas, containing two hundred acres, where and when you can attend and make defense if you think proper.

18

Given under my hand this 17th day of Feb., A. D. 1869.

JONATHAN GORE, *Guardian.*

STATE OF KANSAS, } ss:
County of Johnson, }

Jonathan Gore, of lawful age, *who* first having been duly sworn according to law says that he served a true copy of the within notice and petition on George Washington by delivering the same to him on the 17th day of Feb. A. D. 1869.

JONATHAN GORE, *Guardian.*

Sworn and subscribed to before me this 2nd day of March, 1869.

B. P. NOTEMAN,
Probate Judge.

Filed March 2nd, 1869.
B. P. NOTEMAN,
Probate Judge.

Know all men by these presents, that Jonathan Gore, as principal and S. M. Cornatzer, J. A. Walker as sureties are held and firmly bound to the State of Kansas for the use of George Washington (minor heir) in the penal sum of four thousand dollars, lawful

money of the U. S. *States*, — which payment well and truly to be made we bind ourselves, our heirs, assigns and legal representatives, jointly, firmly and severally by these presents.

The conditions of the above bond is this: Whereas, the said Jonathan Gore has been duly appointed guardian of the person and property of George Washington, by the probate court of Johnson county, Kansas, and has filed his petition praying for an order to sell the northwest quarter of section twenty-nine (160 acres); also the southeast quarter of the northwest quarter of section thirty (30), 40 acres, all in township eleven (11), south of range twenty-five (25), east of the sixth principal meridian in Wyandotte Co., Kansas. Now if the said Jonathan Gore shall faithfully perform his duties in that respect and account for and apply all monies received by him under the direction of the court then this bond is to be void and of no force, otherwise to be and remain in full force.

JONATHAN GORE.
S. M. CORNATZER.
JAS. A. WALKER.

Approved and filed March 2nd, 1869.

B. P. NOTEMAN,
Probate Judge.

STATE OF KANSAS, }
County of Johnson, } ss:

We, the undersigned, two residents of the county of Wyandotte, State of Kansas, *having* been duly sworn according to law by Jonathan Gore, notary public in and for the county of Johnson, State of Kansas, to assess the following land:

The northwest quarter of section twenty-nine (29), and the northeast quarter of section 30; also the east half of the northwest quarter of section 30, all in township eleven (11), south of range 25, east of the sixth principal meridian, in Wyandotte county, Kansas, containing four hundred (400) acres. And we do from actual view of the above described land *we* assess the value thereof at $10.00 ten dollars per acre.

DAVID BLUEJACKET.
JONATHAN SPARLIN.

I hereby certify that the above named David Bluejacket and Jonathan Sparlin, two residents of the county of Wyandotte, State of Kansas, were duly sworn by me to truly assess the value of the above described land, and made apprais-ment thereof as above set forth this 13th day of February, A. D. 1869.

JONATHAN GORE,
Notary Public. [SEAL.]

Filed March 2nd, 1869.
B. P. NOTEMAN,
Probate Judge.

STATE OF KANSAS, } ss:
County of Johnson, }

19 In Probate Court, Johnson County, Kansas.

Jonathan Gore, guardian of George Washington, minor of Susan Whitefeather, "deceased," comes and reports that on the 3rd day of March, A. D., 1869, in obedience to the order of this court made at its January term of A. D. 1869, directing me to sell at private sale the following real estate, to-wit: the northeast quarter of section 29, and the southeast quarter of the northwest quarter of section 30, township eleven, south of range 25, east of the sixth principal meridian in Wyandotte county, containing two hundred acres, I did on the 3rd day of March, A. D. 1869, sell the above mentioned real estate at private sale to Joel F. Kinney for two thousand dollars, that being the best and highest price offered for said land.

JONATHAN GORE, *Guardian.*

STATE OF KANSAS, } ss:
County of Johnson, }

Jonathan Gore, of lawful age, *who* first having been duly sworn according to law, says the above report is true and that he did not direct- or indirectly purchase any part of said land—and that the price paid was the highest price offered for the same.

JONATHAN GORE.

Sworn and subscribed to before me this — day of ——, A. D. 1869.

—— ——.

Filed March 18th, 1869,
B. P. NOTEMAN,
Probate Judge.

Probate Court, Johnson County, State of Kansas, Jan'y Term, A. D. 1869.

MARCH 18TH, 1869.

Court met pursuant to adjournment,
Present: Same court.

In re the state of GEORGE WASHINGTON, "a Minor of Susan Whitefeather, Deceased"; Jonathan Gore, "Guard."

Report of Sale of Real Estate.

Now comes Jonathan Gore, guardian of the property of George Washington, a minor heir of Susan Whitefeather, deceased, and reports to this court his sale of the following real estate, to-wit: the

northwest quarter of section 29, and the southeast — of the northwest quarter of section 30, township 11, south of range 25, east of the 6th principal meridian in Kansas, containing 200 acres as the property of said minor in obedience to the order heretofore made.

On examination whereof it appearing that said sale is regular and in conformity with law and that said guardian hath complied with the terms of said order and that the price that said land was sold for was the highest that could be obtained,

It is therefore ordered that said sale be and it is hereby approved and confirmed.

B. P. NOTEMAN,
Probate Judge."

Jol. "2," page 395.

It is further understood and agreed that the following is a correct copy of the records of the Department of the Interior, and Office of Indian Affairs of the sale of the northwest quarter of section 29 (160 acres); also the southeast quarter of the northwest quarter of section 30 (40 acres), all in township 11, south of range 25, east of the sixth principal meridian, and in Wyandotte county, Kansas, by Jonathan Gore, guardian of George Washington, a minor, to Joel F. Kinney, to-wit:

20 "DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *July* 20, 1896.

I, D. M. Browning, Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true copies of the originals as the same appear of record in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, on the day and year first above written.

D. M. BROWNING,
Commissioner.

"Know all men by these presents, that I, George Washington, a Shawnee Indian minor heir and sole heir of Susan Whitefeather deceased, by my guardian Jonathan Gore of the county of Johnson, State of Kansas, for and in consideration of the sum of two thousand dollars to me paid, on the date of these presents, the receipt whereof is hereby acknowledged do by these presents grant, bargain, sell and convey unto Joel F. Kinney of Kansas City, county of Jackson, State of Missouri, the following described land, to-wit:

The northwest quarter of section twenty-nine (29) 160 acres; also the southeast quarter of the northwest quarter of section thirty (30) 40 acres—all in township eleven (11), south of range twenty-five (25), east of the sixth principal meridian in Kansas, containing two hundred acres. To have and to hold the same unto the said Joel

F. Kinney and to his heirs and assigns, and the said George Washington, by his guardian Jonathan Gore covenant-, to and with the said Joel F. Kinney and his heirs and assigns that the said premises are free from all encumbrances whatsoever and that I will warrant and defend the title of the said premises against the lawful claims of all persons whomsoever except the United States.

In witness whereof, I have hereunto set my hand and seal this 14th day of October, A. D. 1868.

GEORGE WASHINGTON, [SEAL.]
By his guardian, JONATHAN GORE. [SEAL.]

Witness-:
W. H. WALTER.
JAS. B. ABBOTT.

STATE OF KANSAS, }
Shawnee Agency, County of Johnson, } ss:

On this 14th day of October A. D. 1868 before me a U. S. Indian agent in and for said tribe came George Washington a Shawnee Indian by his guardian Jonathan Gore to me personally known to be the identical person described in, and whose name is affixed to the above conveyance as grantor and acknowledged the same to be his own voluntary act and deed.

Witness my hand the day and year last above written.

H. L. TAYLOR,
U. S. Ind. Agent.

SHAWNEE AGENCY, *November 6th*, 1868.

I, H. L. Taylor, United States agent for the Shawnee tribe of Indians in the State of Kansas, do hereby certify that the contents purport and effect of the accompanying deed of conveyance made, and executed by George Washington by his guardian Jonathan Gore a Shawuee Indian, was duly explained to and fully understood by the said grantor; that the consideration specified therein is a fair price for the land, that the same has been paid to the grantor in my presence in legal tender notes of the United States, and that the conveyance is in every respect free from fraud and deception.

Witness my hand this 6th day of November A. D. 1868,

H. L. TAYLOR,
United States Agent.

SHAWNEE AGENCY.

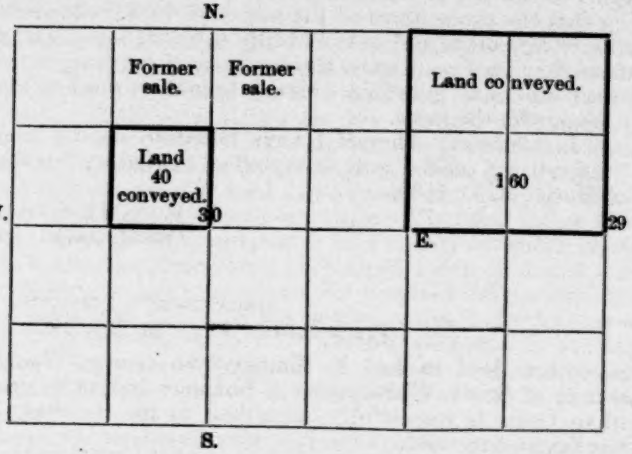
We, Graham Rogers and Charles Tucker the two chiefs of the Shawnee nation do hereby certify that George Washington is
21 the sole heir of Susan Whitefeather (deceased) Shawnee Indian that said George Washington is a minor and not com-

petent to manage his affairs, but Jonathan Gore his guardian is competent, and that the price paid is a fair consideration for the land and we think it advisable that the land should be sold.

GRAHAM ROGERS, *1st Chief.*
CHARLES TUCKER, *2nd Chief.*

Plat.

Showing the land conveyed by George Washington, minor, sole heir of Susan Whitefeather (dec'd), Shawnee Indian, to J. F. Kinney; also showing the land previously conveyed in same section by the said Geo. Washingyon, minor heir.



The N. W. ¼ of sec. 29; the S. E. ¼ of the N. W. ¼ of sec. 30, township 11, south, range 25 east of the sixth principal meridian in Kansas containing in the aggregate 200 acres.

I, Chester Rathruff, do hereby certify that the foregoing diagram is a correct plat of the land embraced in the accompanying deed, made and executed by George Washington minor and a Shawnee Indian, also of the land previously sold by the said Geo. Washington.

Dated this 14th day of October, A. D. 1868.

CHESTER RATHRUFF, *Surveyor.*

STATE OF KANSAS, }
County of Johnson, } *ss:*

I, B. P. Noteman, judge of the probate court for and within the county and State aforesaid do hereby certify that on the 27th day of November A. D. 1867 Jonathan Gore was appointed guardian of the person and property of George Washington a minor heir, and

Shawnee Indian—and that at the January term A. D. 1869 of said court to-wit: on the 2nd day of March A. D. 1869, the said guardian filed his petition praying for an order to sell the following real estate as the property of said minor to-wit: the northwest quarter of section twenty-nine, the southeast quarter of the northwest quarter of section thirty, all in township eleven, south of range twenty-five east of the 6th principal meridian in Kansas. And upon the hearing of said petition and the evidence in the case, and order was made by said court for the sale of the above described real estate, and at the January term A. D. 1869 of said court, the said guardian made his report of the sale of the above described real estate, and it appearing that the proceedings of the sale were in accordance to the order heretofore made and in conformity with the law. The sale of the above described real estate, was by the said court approved and confirmed, and said guardian ordered to make a deed to the purchaser for the same.

22 In testimony whereof I have hereunto set my hand and affixed my official seal, at my office in Olathe, this the 19th day of March, A. D. 1869.

B. P. NOTEMAN,
Probate Judge. [SEAL.]

DEPARTMENT INTERIOR,
OFFICE INDIAN AFFAIRS, *May 19th*, 1869.

The within deed to Joel F. Kinney from George Washington minor heir of Susan Whitefeather a Shawnee Indian by guardian Jonathan Gore, is respectfully submitted to the Secretary of the Interior for his approval.

E. L. PARKER,
Commissioner.

DEPARTMENT INTERIOR, *May* 21, 1869.

The within deed is hereby approved.

J. D. COX, *Secretary.*

It is further agreed that the following is a true and correct copy of the records of the probate court of Wyandotte county, State of Kansas, in the appointment of Elizabeth Longtail as the guardian of George Washington, minor heir of Susan Whitefeather, a Shawnee Indian:

"Guardianship of George Washington—Petition for Appointment."

Filed July 10, 1862.

In the Probate Court, Wyandotte County, State of Kansas.

In the Matter of the Appointment of Guardian for GEORGE WASHINGTON, a Minor under the Age of Fourteen Years.

To the judge of said court:

The undersigned respectfully represent that George Washington is a minor under the age of fourteen years, resident in said county, that his father and mother are both dead and he is the only surviving child. That your petitioners are brother and sister of the deceased mother of said infant and at the time of the decease of the mother of said infant your petitioner Elizabeth Longtail took the said infant unto her care and custody and has kept him from that time to the present about six years. That said infant has four hundred acres of land situated in said county of which about ten acres is under improvement with a small cabin on it and has personal property to the amount of four hundred dollars and that the annual rents and income of the said ten acres under improvement is worth twenty-five dollars. That his property is so situated it requires the care and judgment of a person of mature years and that said Elizabeth Longtail is a suitable person to be guardian of said infant.

Whereupon your petitioner requests your honor to appoint Elizabeth Longtail guardian of the said George Washington.

his
JACOB x WHITEFEATHER.
mark.

her
ELIZABETH x LONGTAIL.
mark.

WYANDOTTE COUNTY, *State of Kansas,* } ss:

23 Jacob Whitefeather and Elizabeth Longtail, being first duly sworn says the facts stated and matters and things contained in the above petition are true as they verily believe.

his
JACOB x WHITEFEATHER.
mark.

her
ELIZABETH x LONGTAIL.
mark.

WYANDOTTE COUNTY, } ss:
State of Kansas, }

Subscribed in my presence and sworn to before me this 9th day of July A. D. 1862.

JOHN M. FUNK, *J. P.*

Application of Jacob Whitefeather et al. for Guardian for George Washington.

Bond.

I approve of this within bond and surety this 10th day of July 1862.

E. D. BROWN,
Judge of Probate.

Recorded in Administration Record, page 210.

E. D. BROWN,
Judge of Probate.

Filed July 10, 1862.

In the Matter of Appointment of Guardian of GEORGE WASHINGTON, a Minor under the Age of 14 Years.

In Probate Court, Wyandotte County, State of Kansas.

Whereas the judge of probate court for Wyandotte county has appointed Elizabeth Longtail guardian of George Washington, an infant under the age of fourteen years. Now be it known that we, Elizabeth Longtail as principal and Jacob Whitefeather as surety are held and firmly bound unto the State of Kansas in the full just sum of — dollars that the said Elizabeth will faithfully discharge her duties as such guardian according to law.

Signed with our seals and dated this 9th day of July A. D. 1862.

her
ELIZABETH x LONGTAIL. [SEAL.]
mark.

his
JACOB x WHITEFEATHER.
mark.

Signed and sealed in the presence of

A. B. BARTLETT.

Jacob Whitefeather being sworn says he has property above all executions and debts to an amount exceeding two thousand dollars.

his
JACOB x WHITEFEATHER.
mark.

WYANDOTTE COUNTY, } ss:
State of Kansas, }

Subscribed and sworn to in my presence before me this 9th day of July, 1862.

JOHN M. FUNK, *J. P.*

Offer of Elizabeth Lon-tail in Matter of Application of Guardian for George Washington.

Oath of guardian.

Filed July 10, 1862.

STATE OF KANSAS, } ss:
Wyandotte County, }

Elizabeth Longtail being first duly sworn deposes and says that she will faithfully discharge her duties as guardian of George Washington an infant according to law.

her
ELIZABETH x LONGTAIL.
mark.

24 WYANDOTTE COUNTY, } ss:
State of Kansas, }

Subscribed in my presence and sworn to before me this 9th day of July, A. D. 1862.

JOHN M. FUNK, *J. P.*

It is further understood and agreed that plaintiffs herein claim title to the lots as set forth in their petition herein through the deed set forth above and dated October 14th, 1868, said conveyance of said land in which said lots are located being made by Jonathan Gore as guardian of George Washington, a minor, and Shawnee Indian, to Joel F. Kinney; and that said deed is the only deed to said land in which said lots are located that has been approved by the Interior Department at Washington, D. C.

It is hereby agreed that the record filed in the supreme court of the State of Kansas, in the case of Hannon *vs.* Taylor, and which case is reported in 45 Pacific Reporter 51, contains the laws of the Shawnee tribe of Indians, and that the following is a true and correct copy of said laws, which laws have been in effect since the year 1854, or since their enactment at about that time, or a true and correct copy of article 5 of said Shawnee laws, to-wit:

"Article 5. An act authorizing the appointment of guardians, for insane persons and orphan children.—Be it enacted by the national council that in addition to the duties of councillors, they shall be required and authorized to appoint guardians for insane and incom-

petent persons and also for all minor orphan children on application being made by some competent and responsible person, or persons for that purpose. The guardian or guardians so appointed shall be required to render a schedule of all monies, property and other effects, belonging to such insane person or persons or orphan or orphans, and at least once annually hereafter such guardian or guardians shall be required to give bond and security in a sum double the amount of the value of the property or money or other effects agreeably to the schedule rendered in by such guardian or guardians made payable to the council or their successors in office for the faithful discharge of his, her, or their duty as guardian or guardians.

Be it further enacted that the property or other effects belonging to such insane or incompetent person or orphan shall be valued by at least two disinterested persons, and that the council shall be required to record all such bonds and schedules.

It is further agreed that the following is a true and correct copy of the final settlement of Jonathan Gore, guardian of George Washington, minor heir of George and Judy Washington, as recorded in the probate court of Johnson county, Kansas, to-wit:

25 In the Probate Court, Johnson County, Kansas.

"In the Matter of the Estate of GEORGE WASHINGTON, a Minor Heir of George and Judy Washington, Dec'd.

And now comes the above named George Washington and moves the court for a citation against Jonathan Gore, guardian of the person and property of George Washington, heir of George and Judy Washington, deceased, requiring the said Gore to make his final settlement with said George Washington and pay to his said ward, or into court all moneys that may be due him from said guardian, for the reason that said George Washington is no longer a minor, but is of lawful age, that is more than twenty-one years of age.

WINES AND OGG,
For Washington.

(Endorsed on back:) Motion for citation, Jonathan Gore, guardian of George Washington minor. Filed April 21, 1875, G. F. Hendrickson, probate judge.

Citation to Jonathan Gore, Guardian, for Annual Settlement.

Issued April 21st, 1875. Filed April 23rd, 1875. G. F. Hendrickson, Probate Judge.

THE STATE OF KANSAS, } ss:
Johnson County, }

To Jonathan Gore, guardian of the person, estate, and property of George Washington, minor heir of George and Judy Washington, deceased:

You are hereby notified, that you are required to appear before the probate court, in and for said county of Johnson and State of Kansas, on the 12th day of May, A. D. 1875, the same being the April term of said court then and there to make your final settlement as guardian of the person and property of the above named minor, he being 21 years of age. Hereof fail not, under the penalties of law.

In witness whereof, I, G. F. Hendrickson, judge and *ex-officio* clerk of the probate court of Johnson county, Kansas, have hereunto set my hand and affixed the seal of said court this 21st day of April, 1875.

G. F. HENDRICKSON,
Probate Judge.

To the sheriff of Johnson county.

Jonathan Gore, Guardian of George Washington—Settlement.

Filed Nov. 29th, 1870. B. P. Noteman, Probate Judge.

OLATHE, KANSAS, *January* 24, 1870.

Received of Jonathan Gore the sum of fifty dollars.

his
GEORGE x WASHINGTON.
mark.

GRAHAM ROGERS.

KANSAS CITY, MO., *January* 3rd, 1873.

Mr. Col. Gore to Strouse & Bros.

Mdse. for George Washington $52.35

Received payment,

STROUSE & BROS.

KANSAS CITY, *Nov. 26th*, 1870.

Mr. George Washington bought of W. E. Whiting & Co., merchant taylors.

To coat..... $45.00

Received payment of Jonathan Gore in full.

W. C. WHITING.

Holmes & Dean, pay to George Matney one hundred and fifty dollars of money you collect of Jonathan Gore my guardian and interest thereon at 10 per cent. till paid.

his
GEORGE x WASHINGTON.
mark.

Sept. 25th, 1873.

Attest: HENRY F. A. ROGERS.

26 We accept to pay above when collected of Gore. Sept. 25, 1873.

HOLMES & DEAN.

K. CITY, Mo., *Nov. 21st*, 1874.

Friend Gore, you recollect George Washington gave me Geo. Matney an order on us Sept. 25th, 1873, for one hundred and fifty (150)—which we accepted when collected of you. You paid us ninety dollars thereon, May 9th, 1874. The balance due thereon with interest to this date is seventy-three and 07/100 dollars. Pay me Matney this amount $73.07, and this shall be your receipt for that amount.

HOLMES & DEAN,
Att'ys for Geo. Washington.

OLATHE, *February 16th*/69.

Received of Jonathan Gore, guardian of George Washington, $7.50 for probate fee in order of sale on real estate made on M'ch 2nd, 1869.

B. P. NOTEMAN,
Probate Judge.

SHAWNEE, KANSAS, *Nov. 24th*, 1870.

Rec. of Jonathan Gore, thirty-seven dollars and fifty cents in full for bill clothing bought for George Washington Nov. 18th, 1870. $37.50.

J. A. WALKER.

SHAWNEE, KANSAS, *May 10th*, 1875.

Jonathan Gore bought of S. M. Cornatzer.

For 1874. April 11, one pair calf shoes, $3.00; one cotton pair hose, .25; 4 plugs tobacco, $1.00; April 21, 2 plugs tobacco, .50; May 4, 1874, 1 plug tobacco, .25; May 4, 1874, cash per order J. Gore, $1.35; Dec. 24, 1874, cash per order J. Gore, $6.50. Whole amount assumed, $12.85, for George Washington, a Shawnee Indian.

SHAWNEE, KANSAS, *Nov.* 24/70.

Rec. of Jonathan Gore seven dollars & fifty cents for clothing for George Washington, bo't to-day. $7.50.

J. A. WALKER.

Received of Jonathan Gore the sum of two hundred dollars. Olathe, Dec. 29th, 1869.

his
GEORGE x WASHINGTON.
mark.

Witness:
GRAHAM ROGERS.

OLATHE, KANSAS, *April 13th*, 1870.

Rec'd two hundred dollars of Jonathan Gore.

his
GEORGE x WASHINGTON.
mark.

Witness:
R. S. ROBERTS.

Received of Jonathan Gore the sum of two hundred & fifty dollars. Shawnee, Kansas, Sept. 8th, 1868.

his
GEORGE x WASHINGTON.
mark.

Witnesses:
SUSAN DAUGHERTY.
J. A. WALKER.

OLATHE, KANSAS, *Feb. 15th*, 1870.

Received of Jonathan Gore the sum of fifty dollars.

his
GEORGE x WASHINGTON.
mark.

Attest:
A. S. DEVENNEY.
JOHN M. GIFFIN.

$500.00. Received of Jonathan Gore the sum of five hundred dollars in part for money due me by him, as my guardian, Sept. 24th, 1873.

his
GEORGE x WASHINGTON.
mark.

Attest: WM. HOLMES.

27 Received at Olathe, March 25th, 1870, of Jonathan Gore the sum of two hundred dollars.

his
GEORGE x WASHINGTON.
mark.

S. W. HOITZKINS.

OLATHE, KANSAS, *April 9th*, 1870.

Received of Jonathan Gore the sum of one hundred dollars.

his
GEORGE x WASHINGTON.
mark.

Witness:
J. C. HAYS.

SHAWNEE, KANSAS, *March 1st*, 1869.

Rec'd of Jonathan Gore the sum of $30.00.

his
GEORGE x WASHINGTON.
mark.

Attest: J. A. WALKER.

Received of Jonathan Gore, one hundred and fifty dollars, on a claim of George Washington, against said Gore, as guardian of said Washington May 5th, 1874.

HOLMES & DEAN,
Att'ys for Geo. Washington.

Annual Statement of Jonathan Gore, Guardian of the Property of George Washington, Minor Heir, Made This 29th Day of November, A. D. 1870.

The estate:

	Cr.
1867—Dec. 10th—By sale of real estate.....	$400.00.
1868—April 8th—By sale of real estate.....	2000.00.
1868—March 18th—By sale of real estate.....	2000.00.
Total	$4400.00.

The estate:

	Dr.
1867—Nov.—To cash	$30.00.
" " probate fees	12.50.
" " att'ys' fees	20.00.
1868—July—To cash	240.00.
1869—March—To cash	30.00.
1868— " probate fees	12.50.
1869— " " "	12.50.
1869— " to H. McBride	6.00.
1869— " to fees serving summons & mileage	25.00.
1869— to making 3 Indian deeds	15.00.
1869—Dec.—To cash	200.00.
1870—To cash	50.00.
1870—To cash—Jan.	50.00.
1870— " —Feb.	100.00.
1870— " —April	200.00.
1870— " —March	200.00.
1870— " —April	45.00.
1870— " —Nov	2.50.
1870—Nov.—To overcoat	190.00.
Total amount	$1486.00

Recapitulation.

The estate, Cr.	$4400.00.
The estate, Dr.	1486.00.
Leaving a balance in the hands of said guardian...	2914.00.
Nov. 29th, 1870—To probate fees	5.00.
Balance due estate	$2909.00.

28 STATE OF KANSAS, } ss:
Johnson County, }

Jonathan Gore of lawful age being first duly sworn deposeth and saith that he is guardian of the property of George Washington, said minor heir, and that he has given all credits due said estate and accounted for all moneys that have come into his hands as such guardian of said estate, and that the charges and expenses against said estate are just and correct, and that the amount now remaining in his hands as such guardian, due said estate is $2909.00, and further deponent saith not.

JONATHAN GORE.

Subscribed in my presence and sworn to before me this 29th day of November, A. D. 1870.

B. P. NOTEMAN,
Probate Judge.

It is further agreed that George Washington, defendant herein, and son of Susan Whitefeather, deceased, and a Shawnee Indian, was made a citizen of the United States at Vinita, Indian Territory, before Judge Gill, United States circuit court judge of the northern district, Indian Territory, on September 26th, 1900.

It is further agreed that R. R. Dunbar has been in possession of the property in controversy herein for the past five years as the agent and tenant of said George Washington.

WOODS & MADLEM,
Attorneys for Plaintiffs.
BIRD & POPE,
Attorneys for Defendants.

In the District Court of Wyandotte County, Kansas.

SANFORD M. GREEN ET AL., Plaintiffs,
vs.
R. R. DUNBAR ET AL., Defendants. } No. 14636.

Supplemental Agreed Statement of Facts.

I. It is agreed that the land in controversy was vacant and unimproved up to the time R. R. Dunbar took possession of same as the agent of George Washington, one of the defendants herein.

II. It is hereby further agreed that whatever title to the land in controversy that was acquired by Joel F. Kinney, by the deed of Jonathan Gore, guardian, etc., to Joel F. Kinney etc., was by mesne conveyances vested in the plaintiffs herein.

F. M. WOODS AND
F. M. McHALE,
Attorneys for Plaintiffs.
BIRD & POPE,
Attorneys for Defendants.

29 Endorsed on the back: "No. 14636. Sanford M. Green *et al. vs.* R. R. Dunbar *et al.* Agreed statement of facts. Filed Nov. 19, 1900. A. Gunning, clerk."

And thereafter and on, to-wit: November 20, 1900, and in due time said defendants filed their answer in said cause, which was in the words and figures following, to-wit:

In the District Court of Wyandotte County, Kansas.

SANFORD M. GREEN, LUCRETIA L. GREEN, WILLIAM E. Green, and Effie Green, Plaintiffs,
vs.
R. R. DUNBAR, ELIZABETH DUNBAR, GEORGE WASHington, Allen F. Reed, Al. Payne, T. J. Payne, John Small, and George Dunbar, Defendants. } No. 14636.

Separate Answer and Cross-petition of the Defendants.

Come now the said defendants, R. R. Dunbar, Elizabeth Dunbar, George Washington, Allen F. Reed, Al. Payne, T. J. Payne, John Small and George Dunbar, and for their answer to the amended petition of the plaintiffs Sanford M. Green, Lucretia L. Green, William E. Green and Effie Green, filed herein, allege:

First. That they deny the truth of each and every statement, allegation and averment in said amended petition of the plaintiffs made or contained.

Second. Further answering and for their cross-petition herein, the said defendants R. R. Dunbar, Elizabeth Dunbar, George Washington, Allen F. Reed, Al. Payne, T. J. Payne, John Small and George Dunbar allege that they are the owners and in possession of the following described real property situate in Wyandotte county, Kansas, to-wit: Lots 18, 42, 43, 44, 45 and 47 in block 10; lots 8, 10, 11, 12, 13, 27, 28, 29, 30 in block 8; lots 18, 19, 20, 23, 24, 25, 35, 26, 36 in block 11; lot 9 in block 12; lots 33, 34 in block 13; lots 19, 20 in block 16; lots 20, 21 in block 19; lot 1 in block 7, all in Argentine Heights, an addition to the city of Argentine, Wyandotte county, Kansas, as shown by recorded plat in the register of deeds office in said county, and that said plaintiffs Sanford M. Green, Lucretia L. Green, William E. Green, and Effie Green, set up and make some claim of title thereto, which interferes with the sale of said property by the defendants, and places a cloud upon the title of the defendants to said real property. That said plaintiffs have, in fact, no title to said property whatever, and defendants demand judgment herein that their title and possession of said property be quieted as against the said claims of title of the plaintiffs, and that said plaintiffs be forever barred and enjoined from thereafter setting up or making any claim to said property whatever, and that defendants recover of and from the said plaintiffs their costs herein, and will the court grant such other and further proper relief as defendants may show themselves to be entitled to.

BIRD & POPE,
RIGGS, NEVISON & ALFORD,
Attorneys for Defendants.

Endorsed on back: "No. 14636. Sanford M. Green *et al.* plaintiffs, *vs.* R. R. Dunbar *et al.*, defendants. Separate answer and cross-petition of defendants. Filed Nov. 20, 1900. A. Gunning, clerk. Bird & Pope, Riggs, Nevison & Alford, attorneys for defendants."

* * * * * * *

31 And thereafter and on, to-wit: November 30, 1900, said plaintiffs filed reply to said answer and which is in the words and figures following, to-wit:

In the District Court of Wyandotte County, Kansas.

SANFORD M. GREEN, LUCRETIA L. GREEN, WILLIAM E. GREEN, and Effie Green, Plaintiffs,
vs.
R. R. DUNBAR, ELIZABETH DUNBAR, GEORGE WASHINGTON, AL. Payne, T. J. Payne, John Small, and George Dunbar, Defendants.

Reply.

32 Comes now the said plaintiffs Sanford M. Green, Lucretia L. Green William Green and Effi- Green and for their reply to defendants' answer and cross bill deny each, every and all the material allegations in said answer set forth not expressly hereinafter admitted.

Second. Said plaintiffs deny that the said defendants have any right, title or interest in the said lands described in our amended petition and also described in the defendants' answer.

Wherefore the said plaintiffs pray judgment as set forth in their regular amended petition.

WOODS & MADLEM,
Attorney- for Plaintiffs.

Endorsed on back: "In the district court, Wyandotte county, Kansas. 14636. Reply. Sanford M. Green, Lucretia L. Green, William E. Green and Effie Green, plaintiffs, *vs.* R. R. Dunbar, Elizabeth Dunbar, George Washington, Allen F. Reed, Al Payne, T. J. Payne, John Small and George Dunbar, defendants. Filed Nov. 30, 1900, A. Gunning, clerk."

And thereafter and on, to-wit: December 14, 1901, the court having duly considered of his decision and judgment in said cause, and the briefs of counsel duly siled therein rendered judgment in favor of the plaintiffs and against the defendants, and the journal entry thereof is found in Journal 26 at page — and is in the words and figures following, to-wit:

33–45 DECEMBER 14, 1901.

SANFORD M. GREEN, LUCRETIA L. GREEN, WILLIAM E. Green, and Effie Green, Plaintiffs,
vs.
R. R. DUNBAR, ELIZABETH DUNBAR, GEORGE WASHington, Allen F. Reed, Al. Payne, T. J. Payne, John Small, and George Dunbar, Defendants. } No. 14636.

And now on this December 14, 1901, the court having taken under advisement the above entitled action and the agreed statement of facts and the supplement agreed statement of facts herein, and the briefs of counsel, duly filed herein, doth find for the plaintiffs and against the defendants, and that at the time of the commencment of this action the plaintiffs were the owners and entitled to the immediate possession of the following described real property situate in Wyandotte county, State of Kansas, to-wit: Lots 18, 42, 43, 44, 45 and 47 in block 10; lots 10, 11, 12, 13, 27, 28, 29, 30 in block 8; lots 18, 19, 20, 23, 24, 25, 26, 35, 36 in block 11; lot 9 in block 12; lots 33, 34, in block 13; lots 19, 20 in block 16; lots 20, 21 in block 19; lot 1 in block 7; all in Argentine Heights, an addition to the city of Argentine, and that said defendants wrongfully withheld the possession of said property *of said property* from said plaintiffs, defendants duly excepting.

It is by the court accordingly ordered, adjudged and decreed that the plaintiffs do have and recover from said defendants the possession of said property hereinbefore described, and in controversy herein, together with their costs herein, taxed at the sum of $—, and for all of which let execution issue, defendants, and each thereof, duly excepting.

And for good cause shown time is extended to ten days (10) herefrom for said defendants to make and serve a case-made herein for the supreme court, and defendants to have ten (10) days therertfea in which to suggest amendments thereto, and said case-made to be settled on five (5) days' notice by either party.

The value or amount in controversy in the above entitled action, exclusive of interest and costs exceeds the value of one hundred dollars ($100.00).

* * * * * * *

46 In the Supreme Court of the State of Kansas.

R. R. DUNBAR, ELIZABETH DUNBAR, GEORGE WASHington, Allen F. Reed, Al. Payne, T. H. Payne, John Small, and George Dunbar, Plaintiffs in Error,
vs.
SANFORD M. GREEN, LUCRETIA L. GREEN, WILLIAM E. Green, and Effie Green, Defendants in Error.
} No. 13005.

Revivor of Action by Consent.

Come now the above named plaintiffs in error, R. R. Dunbar, Elizabeth Dunbar, George Washington, Allen F. Reed, Al. Payne, T. H. Payne, John Small and George Dunbar, and suggest to the court that the defendant in error, Sanford M. Green, has died since this action was appealed to the supreme court of Kansas.

And come now said defendants in error, Lucretia L. Green, William E. Green and Effie Green, and also come Lina Hill, Fannie E. McHale and Lottie De Wit, and state that they are the sole heirs of said Sanford M. Green.

It is therefore stipulated and agreed by the plaintiffs in error, and by said defendants in error Lucretia L. Green, William E. Green and Effie Green and said Lina Hill, Fannie E. McHale and Lottie De Wit, that revivor may be had herein and that this action stand revived in the names of said Lucretia L. Green, Effie Green, William E. Green, Lina Hill, Fannie E. McHale and Lottie De Wit, and proceed against them.

F. M. McHALE,
Att'y for Defendants in Error.
Attorneys for Defendants in Error.
BIRD & POPE,
Attorneys for Plaintiffs in Error.

46½–54 [Endorsed:] 13005 R. R. Dunbar *et al. vs.* Sanford M. Green *et al.* Consent to revivor against the heirs of Sanford M. Green. Filed Jan. —7—1903 D. A. Valentine clerk supreme court.

55 & 56 R. R. DUNBAR ET AL., Pl'ffs in Error,
vs.
SANFORD M. GREEN ET AL., Def'ts in Error.
} No. 13005.

Journal Entry of Judgment.

This cause comes on for decision: And thereupon it is ordered and *and* adjudged that the judgment of the court below be *affirmed.* It is further ordered that the plaintiffs in error pay the costs of this case in this court taxed at $11.40 and hereof let execution issue

* * * * * * *

57 R. R. DUNBAR ET AL. v. SANFORD M. GREEN ET AL. } No. 13005. In Banc. Error from Wyandotte County. Affirmed.

Syllabus by the Court—Mason, J.

1. The fact that a litigant is a member of an Indian tribe does not release him from all obligation to be diligent in asserting his rights. While it is one of the matters to be considered with the other circumstances of a case in determining the effect of delay, it is not a complete bar to the defense of laches.
2. Where the land of a Shawnee Indian is sold while he is a minor, by a guardian appointed by a probate court, and the Indian after coming of age delays for more than 21 years to question the validity of the deed, and the property has in the meantime greatly increased in value and passed into the hands of different owners, no fraud or concealment or other exceptional circumstances tending to excuse the delay being shown, he cannot afterwards be permitted to attack the deed on the ground that the proceedings upon which it was based were void for want of jurisdiction.

All the justices concurring.

A true copy.
Attest:

_____,
Clerk Supreme Court.

58 R. R. DUNBAR ET AL. v. SANFORD M. GREEN ET AL. } No. 13005. In Banc. Error from Wyandotte County. Affirmed.

The opinion of the court was delivered by MASON, J.:

This proceeding originates in a controversy over the title to 32 lots forming parts of 8 different blocks in Argentine Heights, an addition to the city of Argentine, in Wyandotte county. The northwest quarter of section 29, in township 11, of range 25 (in which quarter section such lots are located) was patented by the United States on December 28th, 1859, to Susan Whitefeather, as a member of the Shawnee Indian tribe, under the provisions of the treaty of May 10, 1854. She died some time prior to July 10, 1862, and her son, George Washington, inherited such land. He remained a member of the tribe until September 26, 1900, when he was made a citizen of the United States. On November 27th, 1867, he being then over 14 years of age, the probate court of Johnson county appointed Jonathan Gore as his guardian. Gore, as such guardian, under authority of such court sold said quarter section of land (with an additional

tract of 40 acres) to Joel F. Kinney for $2000.00, executing to him a guardian's deed, which was approved by the Secretary of the Interior May 21, 1869. The title so acquired by Kinney to the property here involved has passed by a series of conveyances to the Greens, defendants in error. George Washington (who may be considered as the sole plaintiff in error, he alone claiming title) took no step to challenge the validity of the guardian's deed until June 25, 1895, when according to the agreed statement of facts upon which the case was submitted to the district court, R. R. Dunbar, another plaintiff in error, took possession of the land as his agent. The Greens brought an ejectment action. The Indian claimant answered asserting title in himself and asked for a decree against plaintiffs quieting his title. The district court decided in
59 favor of plaintiffs. Plaintiffs in error ask to have the judgment reversed upon the ground that the guardian's deed was void, for the reason (among others) that, the real estate being owned by a Shawnee Indian deriving title by descent from the original patentee, the probate court had no jurisdiction to appoint a guardian or to order its sale. They further contend that so long as George Washington retained his character as a tribal Indian no statute of limitations ran against him, he could not be estopped by his conduct, and no laches could be imputed to him. No brief has been presented or argument made in this court in behalf of defendants in error.

We shall assume for the purposes of this case that the guardian's deed was void for want of jurisdiction. It is not claimed that it was tainted by any fraud or that it was in contravention of any statute. It seems to be virtually conceded that in the case of an ordinary litigant inaction for so long a time would constitute an effective bar to the assertion of a claim to the land, regardless of any statute of limitation. It will be noted that George Washington must have reached the age of 21 years before November 27, 1874. There was therefore an interval of more than 21 years after he attained his majority within which he did nothing to assert his title or to challenge the sufficiency of the guardian's deed. In the meantime we know without evidence that the property must have increased greatly in value and the record shows that it has been platted into city lots and sold in small parcels to different persons. The serious question for consideration then is whether a member of an Indian tribe may suffer a loss of property rights through laches, and if so to what extent his character as such affects the rule as applied in other cases.

At page 217 of volume 16 the American & English Encyclopedia of Law (2d edition) under the title "Indians," and also at page 108 of volume 18 of the same work, under the title "Laches," it is stated as a general proposition that laches cannot be imputed to a tribal Indian. However, only two cases are cited in support of the statement. They are Laughton *v.* Nadeau, 75 Fed. 789, and Felix *v.* Patrick, 145 U. S. 317. In the very extensive brief filed by plaintiffs in error the only cases cited upon this specific proposition are the two just noted and Sheldon *v.* Donohue, 40 Kan. 346.

60 The last named case is not in point. There a Chippewa Indian held title to a tract acquired under a treaty providing that the land could not be sold or otherwise disposed of except to the United States or to the members of the tribe. While this treaty provision was still in force the Indian owner deeded the tract to a white man, who took possession and held it for sixteen years. The decision was that since the paramount Federal law prohibited the grantee from taking title, he could not indirectly build up one by adverse possession, estoppel, or any statute of limitations. The question of the degree of accountability for his conduct to which an Indian is subject was not involved and was not discussed.

The case of Laughton *v.* Nadeau, however, (decided in 1896 by Judge Foster) tends to support the contention of plaintiffs in error. There a conveyance was made without the approval of the Secretary of the Interior, the case being one where such approval was necessary to the passing of the title. The Indian owner was permitted to set aside the conveyance. In the opinion it is said—"No laches could be imputed to complainant while under disability as a tribal Indian. He and his land were under the control of the Government." This is all that is said upon the question of laches. It will be noted that the second sentence quoted seems to modify or at all events give the reason for the first. The phrase "disability as a tribal Indian" may be interpreted as having reference to the specific disability under the treaty to alienate the land, rather than to a general disability resulting from the mere fact of membership of an Indian tribe. However, we shall consider the authority of this case as against the decision of the trial court. From what has just been said it is obvious that the language quoted was used almost incidentally, the principal discussion being confined to other questions. It appears to have been based upon two decisions which the court had already cited in another connection. They are Wiggin *v.* Conelly, 16 S. C. R. 914, and Eells *v.* Ross, 12, C. C. A. 205. These cases merely affirm the power of the Government of the United States by consent of the Indian tribe to impose valid restrictions upon the alienation of lands patented to individual Indians, and throw no light upon the matter of laches unless it may be
61 through references in general terms to such individuals being for the purposes there involved under the charge and care of the nation and tribe.

The case of Felix *v.* Patrick, above cited, we construe as an authority against the contention of plaintiffs in error that a tribal Indian cannot be guilty of laches. It is a review of Felix *v.* Patrick, 36 Fed. 457, decided in 1895 by Judge Brewer, Judge Dundy participating in the hearing. The suit involved a tract of land within the city of Omaha. The title of the occupants was based in the first instance upon a fraud perpetrated upon an Indian, whose heirs sought in effect to recover the land by having the title originally taken by fraud, and all titles derived through it, impressed with a trust for their benefit. A demurrer to the complaint was sustained.

The opinion, after stating that the two principal grounds of demurrer were as to the effect of a certain act of Congress and the staleness of plaintiffs' claim, and after discussing such statutory question, proceeds as follows:

"But in such cases equity will recognize the defense of laches and staleness of claim, under proper circumstances, and this is a case where it seems eminently proper to recognize and enforce such a defense. Under ordinary circumstances it does not seem probable that any one would seriously contend that a claim so stale could be enforced, or that equity would take property which had increased so enormously in value after this lapse of time, and give it to parties who had done nothing toward such enhancement of value. But it is earnestly contended that a different rule should be applied in this case, because plaintiffs and their ancestors were Indians; that the law is very tender in respect to the rights of such persons who are not familiar with our laws and methods of transacting governmental or private business, and were ignorant of the disposition which had been made of the scrip. And it is also urged that as Indians they were the wards of the Government, and could not have asserted their rights to the property even if they had known what their rights were. It is not shown that they were not persons of education and intelligence, or that they were not in fact familiar with the land laws, and the methods of governmental business, or that they were not in fact as competent to look after their rights as any persons. We all know that many of these Indians, especially half-breeds, are well educated, intelligent, and as fully competent to look after their business affairs as any persons; and the fact that they were Indians, and maintaining tribal relations, and were in a certain sense the wards of the Government, did not debar them from a hearing in the courts of Nebraska. * * * At any time during the last 27 years these plaintiffs or their ancestors could have come into the courts of Nebraska and asserted their rights, and, as this scrip was of value simply for the entering of lands, they could at any time, by examining the records at Washington, have ascertained whether it had been used and by whom, and where the land for which it had been used was located. The means of knowledge were open before them. They had the right to sue, and the courts would have given them full protection. It would savor little of equity to permit them to come in now and take from these many defendants, most of whom are innocent of any intentional wrong, property of such enormous value, on the ground that their ancestor 28 years ago was swindled out of script of such trifling value,—a million dollars to-day for one hundred and fifty dollars twenty eight years ago, I cannot believe that equity demands or even tolerates this. The demurrer will be sustained."

62 Upon the appeal the supreme court affirmed the decree of the circuit court. The opinion, after stating that there were really but two questions involved in the case, one being whether

plaintiffs were estopped by laches, and after discussing the other question, proceeds as follows:

"The most important question in this case, however, the question upon which its result must ultimately depend, is that of laches. * * * It admits of no doubt that if Sophia Felix and these plaintiffs had been ordinary white citizens, under no legal disabilities, such as those arising from infancy, lunacy or coverture, this lapse of time would be fatal to a recovery; at least unless it were conclusively shown that knowledge of the fraud was not obtained, and could not by reasonable diligence have been discovered, within a reasonable time after it was perpetrated. In reply to this defense of laches, plaintiffs rely mainly upon the fact that Sophia Felix and her heirs were at the time, and continued to be until 1887, tribal Indians, members of the Sioux nation, residing upon the reservation in the State of Minnesota, and incapable of suing in any of the courts of the United States. We are by no means insensible to the force of this suggestion. Whatever may have been the injustice visited upon this unfortunate race of people by their white neighbors, this court has repeatedly held them to be the wards of the nation, entitled to a special protection in its courts and as persons "in a state of pupilage." Congress, too has recognized their dependent condition and their hopeless inability to withstand the wiles or cope with the power of the superior race, by imposing restrictions upon their power to alienate lands assigned to them in severalty, either by making their scrip non-assignable, as in this case, or by requiring the assent of the President to their execution of deeds as in the case of Pickering *v.* Lomax, *ante*, 310, decided at this term. We fully coincide with what was said by Mr. Justice Davis in the case of the Kansas Indians, 5 Wall. 737, 758, that "the conduct of Indians is not to be measured by the same standard which we apply to the conduct of other people." But their very analogy to persons under guardianship suggests a limitation to their pupilage, since the utmost term of disability of an infant is but 21 years, and it is very rare that the relations of guardian and ward under any circumstances, even those of lunacy, are maintained for a longer period than this. It is practically admitted in this case, that, in 1887, when their relations with their tribe were severed by accepting allotments of land in severalty under the treaty of 1878, they became citizens of the United States; that they were then chargeable with the same diligence as white people in the discovery of this fraud; and, as their bill was filed in 1888, it was claimed that they fulfilled all the requirements of law in this particular. While, as alleged in the bill, their discovery of this fraud may have been contemporaneous with their becoming citizens of the United States there is no palpable connection between the one fact and the other, and we think the bill is defective in failing to show how the fraud came to be discovered, and why it was not discovered before. A simple letter to the Land Department at any time after this scrip was located would have enabled them to identify the land, and the

name of the person who had located it; and it is difficult to see why, if they had ever suspected the misuse of this scrip, they had not made enquiries long before they did, or why their emancipation in 1887 should have suddenly awakened their diligence in this particular. * * * Sophia Felix and her husband must have known that she had parted with the scrip, yet she lived until 1865, and her husband until 1882, without apparently making any attempt to discover what had become of it. Nor did their heirs apparently make any effort to discover it until 1887 when their intelligence seems to have suddenly sprung into activity upon
63 their becoming citizens of the United States. It is scarcely necessary to say in this connection, that while until this time they were not citizens of the United States, capable of suing as such in the Federal courts, the courts of Nebraska were open to them as they are to all persons irrespective of race or color. * * * The mere fact that in 1887 these plaintiffs took their land in severalty and became citizens, does not adequately explain how they so quickly became cognizant of this fraud, or why they had remained so long in ignorance of it."

The opinion then presents a further argument to the effect that even conceding that the complainants were incapable of being affected with laches, it would not necessarily follow that they should have the relief demanded, but that equity would be satisfied with a repayment of the value of the scrip, the fraudulent procuring of which was the foundation of defendant's title. It concludes with a reference to the disastrous consequences that would attend the unsettlement of large numbers of titles "upon which the owners have rested in security for nearly a generation."

We quote thus extensively from this opinion in an effort to present practically all of it that directly affects the subject under consideration, in view of the fact that it has been cited as supporting the view that laches can not be attributed to a tribal Indian. In the brief of appellants in the Federal Supreme Court the following cases, and no others, were cited upon this question: Cherokee Nation *v.* Georgia, 5 Pet. 1, 17; Fellows *v.* Blacksmith, 19 How. 366; Kansas Indians, 5 Wall. 737; New York Indians, 5 Wall. 761; *Ex parte* Crow Dog, 109 U. S. 556; 568; Elk *v.* Wilkins, 112 U. S. 94, 111; United States *v.* Kagama, 118 U. S. 375, 383; Choctaw Indians *v.* United States, 119 U. S. 1. These cases have only the most remote application, and were doubtless invoked, in the absence of more direct authority, because they abound in expressions to the effect that Indians are the wards of the nation and are entitled to protection at the hands of the Federal Government. We conclude that the weight of judicial opinion is against the rule announced in Laughton *v.* Nadeau, above cited. See also in this connection Rubideaux *v.* Vallie, 12 Kan. 28; Hannon *v.* Taylor, 57 Kan. 1; Schrumpeher *v.* Stockton, 58 Kan. 758; S. C. 183, U. S. 290; Swartzel *v.* Rogers, 3 Kan. 374. And we also approve on principle the doctrine that the fact that a litigant

is a tribal Indian is not a complete bar to the defense of laches, although it is to be taken into account in
64–83 determining the effect of his inaction. Whenever this defense is invoked there must be a consideration of all the special circumstances of the case. The mere extent of the delay is one item to be considered; among others are,—any change of conditions, the intervention of the rights of third parties, the likelihood of other interests being affected by the delay, the presence of fraud and its character, the diligence required to discover it, and so on. The partial disability of a litigant resulting from his membership in an Indian tribe is merely one factor, to be considered with all the other features of the case, and given the weight to which it may be entitled, in reaching a conclusion consonant with the general rule. His being an Indian entitles him to more liberal treatment in the matter just so far as it is an indication of his inferior capacity. To hold this guarantees him the exact amount of special protection to which he is fairly entitled. To go further and hold that it gives him absolute immunity from the consequences of his own neglect would be to make it a means of injustice toward others rather than of protection to himself. Taking this view of the case we find no difficulty in affirming the judgment of the trial court. Apart from the mere fact of the claimant being an Indian there is nothing to excuse the delay in this case. The land was sold for a price that two Shawnee chiefs and an Indian agent certified to be fair; the Secretary of the Interior approved the sale; the owner received and retained certainly a part and presumably the whole of the purchase money; no fraud of any character is charged; there was no concealment; while the property directly involved in this litigation may not be very valuable, the determination of this case necessarily affects the title to two hundred acres of land now lying close to a great city and probably owned by many different individuals. Perhaps the consideration last stated is not one proper to be weighed at this time and in this proceeding, but it is one that need not be taken into account to reach a just decision. We conclude that notwithstanding that plaintiff was a Shawnee Indian, his inaction for 21 years under such circumstances was sufficient to preclude him from thereafter asserting a title to this land.

The judgment is affirmed.

All the justices concurring.

A true copy.

[Seal Supreme Court, State of Kansas.]

Attest:

D. A. VALENTINE,
Clerk Supreme Court.

84 In the Supreme Court of the United States of America.

R. R. DUNBAR, ELIZABETH DUNBAR, GEORGE WASHINGTON, Allen F. Reed, Al. Payne, T. H. Payne, John Small, and George Dunbar, Plaintiffs in Error,
vs.
LUCRETIA L. GREEN, WILLIAM E. GREEN, EFFIE GREEN, Lina Hill, Fannie E. McHale, and Lottie De Witt, Defendants in Error.
} No. 200.

Stipulation.

It is hereby stipulated — agreed by and between the plaintiffs in error, and defendants in error, above named, that in the printing of the record herein that the following pages only of said record are to be printed, to-wit: Pages ten (10) to thirty-three (33) inclusive except bond for costs on page- 30–31; page forty-six (46); page fifty-five (55); pages fifty-seven (57) to sixty-four (64) inclusive.

L. F. BIRD AND
H. G. POPE,
Attorneys for Plaintiffs in Error.

L. F. BIRD, *Of Counsel.*

F. M. WOODS,
CHARLES F. HUTCHINGS,
Attorneys for Defendants in Error.

CHARLES F. HUTCHINGS, *Of Counsel.*

[Endorsed:] No. 200. 19257 In Supreme Court U. S., October term, 1904. R. R. Dunbar *et al.*, *vs.* Lucretia L. Green *et al.* Stipulation.

85 [Endorsed:] File No. 19,257. Supreme Court U. S. October term, 1904 Term No. 200. R. R. Dunbar *et al.*, pl'ffs in error, *vs.* Lucretia L. Green *et al.* Stipulation to omit parts of record in printing. Filed July 23, 1904

Endorsed on cover: File No. 19,257. Kansas supreme court. Term No. 200. R. R. Dunbar, Elizabeth Dunbar, George Washington, *et al.*, plaintiffs in error, *vs.* Lucretia L. Green, William E. Green, Effie Green, *et al.* Filed March 1st, 1904. File No. 19,257.